

## PATENT COOPERATION TREATY


PCT

REC'D 16 NOV 2005

## INTERNATIONAL PRELIMINARY REPORT ON PATENTABILITY

(Chapter II of the Patent Cooperation Treaty)

(PCT Article 36 and Rule 70)

Applicant's or agent's file reference	<b>FOR FURTHER ACTION</b>		See Form PCT/PEA/416
International application No. PCT/EP2004/013870	International filing date (day/month/year) 06.12.2004	Priority date (day/month/year) 18.12.2003	
International Patent Classification (IPC) or national classification and IPC A23G3/00, A23G3/20, A23G9/00, A23G9/04, A23G9/02, A23L1/0524, C08L1/02, C08L1/08			
Applicant UNILEVER PLC et al.			
<p>1. This report is the international preliminary examination report, established by this International Preliminary Examining Authority under Article 35 and transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 6 sheets, including this cover sheet.</p> <p>3. This report is also accompanied by ANNEXES, comprising:</p> <p>a. <input checked="" type="checkbox"/> sent to the applicant and to the International Bureau) a total of 3 sheets, as follows:</p> <p><input checked="" type="checkbox"/> sheets of the description, claims and/or drawings which have been amended and are the basis of this report and/or sheets containing rectifications authorized by this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions).</p> <p><input type="checkbox"/> sheets which supersede earlier sheets, but which this Authority considers contain an amendment that goes beyond the disclosure in the international application as filed, as indicated in item 4 of Box No. I and the Supplemental Box.</p> <p>b. <input type="checkbox"/> (sent to the International Bureau only) a total of (indicate type and number of electronic carrier(s)) , containing a sequence listing and/or tables related thereto, in computer readable form only, as indicated in the Supplemental Box Relating to Sequence Listing (see Section 802 of the Administrative Instructions).</p>			
<p>4. This report contains indications relating to the following items:</p> <p><input checked="" type="checkbox"/> Box No. I Basis of the opinion</p> <p><input type="checkbox"/> Box No. II Priority</p> <p><input type="checkbox"/> Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability</p> <p><input type="checkbox"/> Box No. IV Lack of unity of invention</p> <p><input checked="" type="checkbox"/> Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement</p> <p><input type="checkbox"/> Box No. VI Certain documents cited</p> <p><input checked="" type="checkbox"/> Box No. VII Certain defects in the international application</p> <p><input checked="" type="checkbox"/> Box No. VIII Certain observations on the international application</p>			
Date of submission of the demand 28.06.2005		Date of completion of this report 14.11.2005	
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465		Authorized Officer  Georgopoulos, N  Telephone No. +49 89 2399-2634	



**INTERNATIONAL PRELIMINARY REPORT  
ON PATENTABILITY**

International application No.  
PCT/EP2004/013870

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**Box No. I Basis of the report**

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1. With regard to the **language**, this report is based on the international application in the language in which it was filed, unless otherwise indicated under this item.
- ☐ This report is based on translations from the original language into the following language , which is the language of a translation furnished for the purposes of:
- ☐ international search (under Rules 12.3 and 23.1(b))
  - ☐ publication of the international application (under Rule 12.4)
  - ☐ international preliminary examination (under Rules 55.2 and/or 55.3)
2. With regard to the **elements\*** of the international application, this report is based on *(replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report)*:

**Description, Pages**

1-17 as originally filed

**Claims, Numbers**

1-20 received on 12.09.2005 with letter of 08.09.2005

**Drawings, Sheets**

1/1 as originally filed

☐ a sequence listing and/or any related table(s) - see Supplemental Box Relating to Sequence Listing

3. ☒ The amendments have resulted in the cancellation of:
- ☐ the description, pages
  - ☒ the claims, Nos. 1-18
  - ☐ the drawings, sheets/figs
  - ☐ the sequence listing (*specify*):
  - ☐ any table(s) related to sequence listing (*specify*):
4. ☐ This report has been established as if (some of) the amendments annexed to this report and listed below had not been made, since they have been considered to go beyond the disclosure as filed, as indicated in the Supplemental Box (Rule 70.2(c)).
- ☐ the description, pages
  - ☐ the claims, Nos.
  - ☐ the drawings, sheets/figs
  - ☐ the sequence listing (*specify*):
  - ☐ any table(s) related to sequence listing (*specify*):

\* If item 4 applies, some or all of these sheets may be marked "superseded."

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**Box No. V Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

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1. Statement

Novelty (N)	Yes: Claims	1-18
	No: Claims	19, 20
Inventive step (IS)	Yes: Claims	
	No: Claims	1-20
Industrial applicability (IA)	Yes: Claims	1-20
	No: Claims	

2. Citations and explanations (Rule 70.7):

**see separate sheet**

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**Box No. VII Certain defects in the international application**

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The following defects in the form or contents of the international application have been noted:

**see separate sheet**

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**Box No. VIII Certain observations on the international application**

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The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

**see separate sheet**

**Item V**

- 1 The amendments filed with the letter dated 08.09.05 meet the requirements of Art.34 (2) (b) PCT.
- 2 Reference is made to the following documents:  
  
D1: WO-A-00 40098  
D2: US-A-5 800 855  
D3: US-A-4 505 943  
D4: US-A-2 263 483  
D5: US-A-3 623 889  
D6: GB-A-1 050 213
- 3 The subject-matter of present independent claims 19 and 20 is anticipated by any one of the documents D1 and D2 (see page 3, lines 22-27; examples 1-3 of D1; and column 1, lines 8-10; column 1, line 62 - column 2, line 6; column 2, line 33 - column 4, line 26; column 4, lines 48-55; figure 1; claims 11-17 of D2).
- 3.1 Here, the following remarks should also be taken into consideration:
  - a/ In the aforementioned letter, the applicant holds that "D1 does not disclose an ice cream comprising an acid which is at least partly neutralised". However, the presence of such an acid is neither explicitly nor implicitly mentioned in any one of present claims 19 and 20 either.  
More specifically, in present claim 14, the dry confectionery premix of present claim 1 is admixed with an "aqueous liquid" to form an aerated confectionery product as in present claim 14: the presence of an acid which is at least partly neutralised in the final product is not disclosed in present claim 14 (and therefore not in any one of present claims 19 and 20 either).
  - b/ The "unique microstructure afforded by aeration with significant amounts of CO<sub>2</sub>", which (according to the applicant) is not disclosed by any one of the documents D1 and D2, is not mentioned in any one of present independent claims 1 and 14 (and therefore not in any one of present claims 19 and 20 either).

- 4 On the contrary, none of the documents D1-D6 anticipates the subject-matter of present independent claims 1, 11 and 12 (see the aforementioned passages for D1-D2 as well as column 1, lines 45-53; column 2, line 49 - column 5, line 18; claims 1, 5, 8, 11 and 12 of D3; page 1, column 1, lines 21-40, page 1, column 2, lines 1-25, example II of D4; column 1, line 61 - column 2, line 16; examples 1-3, claims 1, 2, 7, 8, 12 and 15 of D5; and page 1, lines 39-44; page 2, line 111 - page 3, line 46; example I; claims 1, 6, 14 and 15 of D6).
- 5 The subject-matter of present independent claims 1, 11 and 12 does not involve an inventive step (Art.33 (3) PCT), in regard of any one of the following document combinations: (D2+D5+D6), (D3+D5+D6) and (D3+D4+D5) [for the corresponding passages see section 4 above].
- 5.1 Inasmuch as the applicant's inventive step assessment (presented in the above-mentioned letter) is concerned, the following remarks should also be taken into consideration:
- i/ The formulation "such that when the premix is mixed ... and a pH of greater than about 5.4" in present claim 1, does not constitute a technical feature of said claim, as it is related to the process of admixing the invention's dry confectionery premix with water (and not to said premix itself, which is claimed in said claim). Therefore, said formulation cannot be considered as representing a difference between the subject-matter of present claim 1 and each one of the documents D2-D6.
- ii/ According to the present description (see page 1, lines 27-30 thereof), "it is an object of the present invention to provide a method of making aerated confectionery products, such as ice cream, which ... can be prepared ... without the use of **complex** mechanical methods". Since the present invention has as one of its aims the exclusion of **complex** (and not all) mechanical methods for the production of aerated confectionery products such as ice cream, it can also be easily seen that each one of the documents D2-D5 aims at a similar objective (e.g., D2 discloses that "it is desirable to use conventional equipment typically found in frozen dessert manufacturing facilities" ; see column 1, lines 21-23 of said document).
- 5.2 Present dependent claims: a<sub>1</sub>/ 2-12; and a<sub>2</sub>/ 15-18, do not contain technical features that would establish novelty and / or inventive step (Art.33 (2) and / or (3) PCT) for the

subject-matter of present independent claims: b<sub>1</sub>/ 1; and b<sub>2</sub>/ 14, respectively.

- 6 The subject-matter of present claims 1-20 is susceptible of industrial application in the field of food chemistry (Art.33 (4) PCT).

**Item VII**

- 7 The documents D1-D6 are not mentioned in the present description (Rule 5.1 (a) (ii) PCT).
- 8 The formulation "and non-limiting" (see page 9, line 18 of the present description), does not meet the requirements of Rule 9.1 (iv) PCT.
- 9 The sentence "All ... reference" (see page 17, lines 6-7 of the present description) does not fulfil the requirements of the PCT-Guidelines, Part II, 4.26-4.27.

**Item VIII**

- 10 The vague and imprecise statement in the description on page 17, lines 7-14 ("Various ... following claims"), implies that the subject-matter for which protection is sought may be different to that defined by the claims, thereby resulting in lack of clarity of the claims (Article 6 PCT) when used to interpret them (see the PCT-Guidelines, Part II, 5.30).
- 11 Present claim 13 has practically the same scope as present claim 14, as the "use of a premix in a method of preparing a confectionery product" is equivalent to "a method of preparing a confectionery product by admixing (using) a premix" (see also the PCT-Guidelines, Part II, A5.21).